

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL A. STOLTZ and U.S. POSTAL SERVICE,
POST OFFICE, Amherst, WI

*Docket No. 98-2094; Submitted on the Record;
Issued April 12, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he was disabled after February 3, 1989 due to his December 10, 1982 and January 9, 1984 employment injuries.

On July 28, 1989 appellant, then a 57-year-old rural mail carrier, filed a claim for injuries sustained in a motor vehicle accident on December 10, 1982. On the reverse side of the claim form, his supervisor indicated that he did not stop work at the time of the accident.

In a decision dated April 30, 1990, the Office of Workers' Compensation Programs initially denied appellant's claim as untimely; however, by decision dated October 11, 1991, a hearing representative set aside the April 30, 1990 decision after finding that appellant's supervisor had actual knowledge of the injury within 30 days.

The Office accepted appellant's claim for multiple rib fractures and lumbosacral strain. The Office further accepted that appellant sustained post-traumatic myofascitis of the back and right shoulder due to a traumatic injury on January 9, 1984.

The record indicates that appellant retired on February 3, 1989. On January 29, 1993 appellant filed a claim for compensation on account of traumatic injury (Form CA-7) requesting compensation beginning the date of his retirement.

In a decision dated January 25, 1996, the Office denied appellant's claim for compensation after February 3, 1989 on the grounds that the weight of the medical evidence did not establish that he had any employment-related disability after this date.

In a decision dated September 23, 1996, a hearing representative set aside the Office's January 25, 1996 decision and remanded the case for resolution of a conflict in medical opinion between Dr. C.A. Klasinski, a Board-certified orthopedic surgeon and appellant's attending physician and Dr. Gay Anderson, a Board-certified orthopedic surgeon and neurologist, who provided a second opinion evaluation.

In a decision dated February 27, 1997, the Office found that appellant had not established that he had any condition or disability after February 3, 1989 due to his accepted employment injuries. The Office based its decision on the opinion of Dr. Michael Plooster, a Board-certified orthopedic surgeon, who provided an impartial medical evaluation.

Appellant, through his attorney, requested a hearing before an Office hearing representative. By decision dated December 18, 1997, the hearing representative affirmed the Office's February 27, 1997 decision.

By letter dated February 23, 1998, appellant requested reconsideration and submitted additional medical evidence. In a decision dated April 17, 1998, the Office denied modification of its prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that he had any disability after February 3, 1989 causally related to his December 10, 1982 and January 9, 1984 employment injuries.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

In the instant case, the Office found that a conflict in medical evidence existed between appellant's attending physician, Dr. Klasinski and Dr. Anderson, an Office referral physician. In an office visit note dated June 7, 1990, Dr. Klasinski diagnosed chronic dorsal and lumbar back symptoms and chronic myofascitis secondary to appellant's employment injuries. In a form report dated February 1, 1993, he indicated that appellant had a permanent impairment due to his back injury and was partially disabled from July 1989 to the present. In a report dated August 16, 1995, Dr. Anderson diagnosed rheumatoid spondylitis by x-ray and found that appellant's work injuries did not cause his current symptoms. He further opined, in a supplemental report dated August 23, 1995, that appellant was not disabled from his job as a rural letter carrier at the time of his 1989 retirement due to any employment-related condition.

In a report dated January 20, 1997, Dr. Plooster, a Board-certified orthopedic surgeon selected to resolve the conflict in medical opinion, discussed appellant's history of injury, reviewed the evidence of record and listed findings on physical examination. Dr. Plooster stated:

"This claim has been accepted for occupationally[-]related injuries from the 1982 and 1984 incidents described above. The 1982 injury involved thoracic rib fractures of T8, 11 and 12. The 1984 work[-]related injury was diagnosed as post[-]traumatic fibromyositis. The 1982 injury involved one medical encounter and did not involve active medical treatment. The specific diagnosis was not made until later when subsequent x-rays revealed healed rib fractures on the right.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Based on the medical record review and history tak[en] from [appellant], it is my opinion that this injury resulted in no ongoing permanent disability as [he] went back to his regular job within days of the incident and performed his regular duties. There is no medical evidence to support that he had a significant disability as a result of that accident.

“The 1984 work[-]related injury involved a soft tissue insult to [appellant’s] mid back. There are no x-rays available to document that [he] had any structural breakage of the skeleton or ribs at that time. The diagnosis was made by history taking of [appellant’s] complaints and physical exam[ination] revealing tender areas in [his] back. As a result of this work[-]related injury, [appellant] required supervised medical care by Dr. Klasinski for the effects of the 1984 incident until April 22, 1986. Most of the supervised care involved modified activities related to his work. On April 22, 1986 Dr. Klasinski states, ‘I was pleased to learn that [appellant] has noted significant diminution of his symptom and [he] believes that he has now recovered to the preinjury status. The symptoms remained essentially unchanged and he has been successfully carrying out his work duties. [Appellant] was advised to limit repeated bending or heavy[] lifting as a practical matter, but he was placed on no specific work restrictions.’”

Dr. Plooster further opined that appellant’s employment aggravated a preexisting condition. He stated:

“[Appellant] has significant degenerative changes in his thoracic and lumbar spine which have proven to progress significantly from 1982 until 1996. It is this practitioner’s opinion and that of Dr. Anderson, that [appellant] does have a spondyloarthropathy. He characterizes it as ankylosing spondylitis and certainly this is a distinct probability. One cannot make the diagnosis of ankylosing spondylitis on radiographs alone; it is made on physical exam[ination] radiographs and occasionally by using serology such as an HLAB27 test. Based on the information at hand, [appellant] either has ankylosing spondylitis or a variation of it which produces severe stiffening of the spine due to proliferative spurring which develops over time. It is this practitioner’s belief that [appellant] was undergoing significant spinal changes as a part of the degenerative spine process at the time of the 1984 incident and that incident at work, aggravated the preexisting degenerative condition. Based on Dr. Kasinski, the treating physician’s reports, [appellant] had reached a healing plateau from that aggravation on April 22, 1986. There is no evidence that [appellant] sustained any permanent disability as a result of the 1982 or 1984 work[-]related injuries.”

Dr. Plooster concluded that appellant was not disabled from his employment beginning February 3, 1989 due to his employment injuries.

In situations where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is

entitled to special weight.³ The Board finds that the opinion of Dr. Plooster is sufficiently rationalized and constitutes the weight of the medical evidence on the issue of whether appellant was disabled after February 3, 1989 due to his accepted employment injuries. Dr. Plooster's January 20, 1997 report contained an accurate and complete history of appellant's injury and course of treatment, listed findings upon physical examination and contained an opinion, supported by medical rationale, that appellant was not disabled from employment on or after February 3, 1989 due to his work injuries. Dr. Plooster's rationalized report was based upon a review of all the medical evidence in this case, as well as a physical examination, and is entitled to the special weight afforded an impartial medical examiner.

In support of his request for reconsideration, appellant submitted a report dated January 28, 1998 from Dr. Matthew T. Riordan, a Board-certified orthopedic surgeon. Dr. Riordan expressed his disagreement with Dr. Anderson's finding that appellant had ankylosing spondylitis and noted that neither Dr. Anderson nor Dr. Plooster had ordered an HLA-B27 blood test to determine whether he had "an inflammatory arthropathy." He diagnosed low back pain and referred appellant for blood work. Appellant submitted the results of the HLA-B27 blood test, which were negative. Dr. Riordan's report is insufficient to overcome the weight accorded Dr. Plooster as the impartial medical examiner. He did not reach a diagnosis but instead merely noted symptoms of low back pain. Further, Dr. Riordan did not address the relevant issue in the instant case, which is whether appellant was disabled from employment beginning February 3, 1989 due to his accepted employment injuries. Additionally, in a report dated April 5, 1998, an Office medical examiner reviewed Dr. Riordan's report and related:

"...[T]he statements in Dr. Riordan's report do not contradict Dr. Plooster's report. Dr. Plooster specifically states, in his report from January 20, 1997, that [appellant] had a preexisting spondyloarthropathy (which describes *any* type of disorder affecting the spinal articulations, including common conditions such as degenerative arthritis), and that, based on his information, it *probably* (but not definitely) represented AS [ankylosing spondylitis.]" (Emphasis in original.)

The Office medical adviser further noted that the exact diagnosis of appellant's preexisting back condition was not relevant to the issue of whether he had any continuing disability due to an employment-related aggravation of the condition. The Office, consequently, properly relied upon the opinion of Dr. Plooster, the impartial medical examiner, in finding that appellant did not establish that he was entitled to compensation after February 3, 1989 due to his accepted employment injuries.

The decisions of the Office of Workers' Compensation Programs dated April 17, 1998 and December 18, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 12, 2000

³ Edward E. Wright, 43 ECAB 702 (1992).

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member